

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GLASS,

Plaintiff,

v.

A.K. SCRIBNER, et. al.,

Defendant.

CV F- 05-0457 REC DLB P

FINDINGS AND
RECOMMENDATIONS
RECOMMENDING THAT
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF
BE DENIED WITHOUT PREJUDICE
[DOC #3]

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights complaint filed on April 8, 2005. At the time he filed his complaint, plaintiff also filed a motion for temporary restraining order in which he requests a court order directing prison officials to allow his religious organization to provide plaintiff with his religious dietary needs.

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (quotations and citations omitted). The purpose of a preliminary injunction is to preserve the status quo if the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). A preliminary injunction is available to a plaintiff who "demonstrates either (1) a combination of

1 probable success and the possibility of irreparable harm, or (2) that serious questions are raised and
 2 the balance of hardship tips in its favor.” Arcamuzi v. Continental Air Lines, Inc., 819 F. 2d 935,
 3 937 (9th Cir. 1987). Under either approach the plaintiff “must demonstrate a significant threat of
 4 irreparable injury.” Id. Also, an injunction should not issue if the plaintiff “shows no chance of
 5 success on the merits.” Id. At a bare minimum, the plaintiff “must demonstrate a fair chance of
 6 success of the merits, or questions serious enough to require litigation.” Id.

7 A federal court is a court of limited jurisdiction. Because of this limited jurisdiction, as a
 8 threshold and preliminary matter the court must have before it for consideration a “case” or
 9 “controversy.” Flast v. Cohen, 392 U.S. 83, 88 (1968). If the court does not have a “case” or
 10 “controversy” before it, it has no power to hear the matter in question. Rivera v. Freeman, 469 F. 2d
 11 1159, 1162-63 (9th Cir. 1972).

12 “A federal court may issue an injunction if it has personal jurisdiction over the parties and
 13 subject matter jurisdiction over the claim; *it may not attempt to determine the rights of persons not*
 14 *before the court.*” Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985)
 15 (emphasis added). The Court has only recently ordered service of the complaint on defendants.
 16 Service has not yet been accomplished. Therefore, at this juncture, plaintiff’s motion for injunctive
 17 relief is premature. Plaintiff may file another motion for preliminary injunctive relief at a later stage.
 18 Plaintiff is cautioned to any further motions for preliminary injunctive relief that are filed before
 19 defendants are served with process in this case will be denied as premature.

20 Based on the foregoing, the court HEREBY RECOMMENDS that plaintiff’s motion for
 21 injunctive relief, filed April 8, 2005, be DENIED, without prejudice.

22 These Findings and Recommendations will be submitted to the United States District Judge
 23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen (15)**
 24 **days** after being served with these Findings and Recommendations, plaintiff may file written
 25 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
 26 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
 27 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
 28

1 1153 (9th Cir. 1991).

2 IT IS SO ORDERED.

3 **Dated: February 22, 2006**
4 3c0hj8

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE